

DISCUSSION

Claim Amendments

Claim 1 is amended to include the subject matter of original Claim 2. With this amendment, claims 2 and 11 are cancelled.

Restriction Groups

The Office Action, with the present Claim amendments, has grouped the claims of the present application into the following groups:

Group I, claims 1, 2-9, drawn to a method of making a catalyst.

Group II, claims 10, 12-18 and 20, drawn to polymerization processes.

Group III, claim 19, drawn to a catalyst.

For completeness of response to the restriction set forth in the Office Action, Applicants select Group I with traverse.

The Office Action states the Groups 1-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding feature. The Office Action further states

.."it is known in the art to make DMC catalysts having particle sizes on the order of 0.1 micron, the catalyst composition is not novel or unobvious. And as the corresponding technical feature is not novel or unobvious, restriction is proper."

As amended, the claims do have a common element as to the average particle size of the DMC catalyst produced and used.

A general statement regarding it is known DMC catalyst in the order of 0.1 micron is known in the art is in contravention to MPEP 2144.03. See in particular 2144.03(B), "Ordinarily there must be some form of evidence in the record to support an assertion of common knowledge." Applicants specifically request documentation supporting the assertion it is known in the art to make DMC catalysts having average particle size of 0.1 micron.

For the Examiner convenience, attached as Addendum 1, is Applicant's response filed in Opposition Proceedings in the European Patent Office regarding the corresponding claims on the average particle size of the DMC catalyst. Also attached as Addendum 2, is the Decision of the Oral Hearing finding the claims directed to the average particle size of the DMC catalyst to be novel and non-obvious over the art.

Based on the above amendments and remarks, Applicants respectfully request the restriction requirement be withdrawn and request examination of pending claims 1, 2-10, and 12-20 of the present application.

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Respectfully submitted,

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